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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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27496	7590	09/01/2005	EXAMINER	
PILLSBURY WINTHROP SHAW PITTMAN LLP 725 S. FIGUEROA STREET SUITE 2800 LOS ANGELES, CA 90017			ABEL JALIL, NEVEEN	
			ART UNIT	PAPER NUMBER
			2165	

DATE MAILED: 09/01/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/741,600

Applicant(s)

HUNT ET AL.

Examiner

Neveen Abel-Jalil

Art Unit

2165

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 10 May 2005.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 2-8, 31-36, 38-44, 46, 47 and 50-55 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 44, 46, 47 and 50 is/are allowed.
- 6) ☒ Claim(s) 2-8, 31-36, 38-43, 51-55 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- ☐ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____
- ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
- ☐ Notice of Informal Patent Application (PTO-152)
- ☐ Other: _____

DETAILED ACTION

Remarks

1. The Amendment filed on May 10, 2005 has been received and entered. Claims 1, 9-30, 37, 45, 48, and 49 have been cancelled. Claim 55 is newly added. Therefore, claims 2-8, 31-36, 38-44, 46-47, and 50-55 are now pending.

Claim Rejections - 35 USC § 103

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. Claims 2-8, 31-36, 38-43, and 51-55 are rejected under 35 U.S.C. 103(a) as obvious over Kaufman et al. (U.S. Pub. No. 2001/0032336 A1).

As to claim 51, Kaufman et al. discloses an automatic user preference detection computer system, comprising:

a preference determination module, independent of a user computing device, to create an initial preference profile for a user of a media content distribution source, the preference profile being based on the user's answers to preliminary questions submitted to the automatic user preference detection system and a determination of local media content files stored on the user computing device, wherein the determination of the local media content files stored on the user device determined when the preference determination module scans the user computing device

(See page 2, paragraph 0022, wherein “answers to preliminary questions” reads on “user data can be actively collected...includes various attributes”, also see page 1, paragraphs 0011-0012, wherein “scanning the user device” reads on “extracting files from memory”);

a database, independent of the user computing device, to store the initial preference profile for the user of the media content file distribution source (See page 2, paragraphs 0015-0016); and

a processing module, independent of the user computing device, to select a media content file to distribute to the user based on the initial preference profile (See page 2, paragraphs 0018-0021), and a time of year (See page 1, paragraph 0009, wherein “time of year” reads on “target broadcast time”).

Kaufman et al. discloses the claimed invention except for scans a “disk drive” of the user-computing device. Kaufman et al. does not explicitly teach scans a disk drive, however he teaches scanning a memory.

It would have been obvious to one having ordinary skill in the art at the time the invention was made to store files in a “disk drive” since it was known in the art that memory resides in a computer “hard drive”.

As to claim 52, Kaufman et al. discloses an automatic user preference detection computer system, comprising:

a preference determination module, independent of a user computing device, to determine a preference profile for a user of a media content distribution source, the preference profile being based on previously determined media scores for the user and local media content files determined by the preference determination module scanning the user computing device to

determine the local media content files stored on the user computing device (See page 1, paragraphs 0011-0012, wherein “scanning the user device” reads on “extracting files from memory”);

a database, independent of the user computing device, to store the preference profile for the user of the media content file distribution source (See page 2, paragraphs 0015-0016);

a score calculation module, independent of the user computing device, to determine a score for a media content file distributed to the user by the media content file distribution source, wherein the score is calculated based on a comparison of a length of time in which the user allows the media content file to be played at the user computing device relative to a total length of the media content file (See page 1, paragraphs 0009-0011); and

a processing module, independent of the user computing device, to modify the preference profile based on the score to create a new preference profile, wherein the processing module further selects a second media content file to transmit individually to the user computing device based on the new preference profile (See page 2, paragraphs 0018-0021, wherein “transmit individually” deemed to be personalization of the broadcast).

Kaufman et al. discloses the claimed invention except for scans a “disk drive” of the user-computing device. Kaufman et al. does not explicitly teach scans a disk drive, however he teaches scanning a memory.

It would have been obvious to one having ordinary skill in the art at the time the invention was made to store files in a “disk drive” since it was known in the art that memory resides in a computer “hard drive”.

As to claim 53, Kaufman et al. discloses a method of automatically detecting media content preferences, comprising:

storing a preference profile for a user of a media content file distribution source at the media content file distribution source which is independent of a user computing device, the preference profile being based on previously determined media scores for the user and media content files of the user computing device determined by scanning the user computing device (See page 2, paragraphs 0015-0016, also see page 1, paragraphs 0011-0012, wherein “scanning the user device” reads on “extracting files from memory”) by preference determination module located at the media distribution source;

determining a score, at a preference processing subsystem independent of the user computing device, for a media content file distributed to the user by the media content file distribution source, wherein the score is calculated based on a comparison of a length of time in which the user allows the media content file to be played at the user computing device relative to a total length of the media content file (See figure 2, 975, Limited Device Capture, Rating, shows “Rating” reads on “score”, also see page 1, paragraphs 0009-0011);

modifying the preference profile, at the preference processing subsystem independent of the user computing device, based on the score to create a modified preference profile (See page 2, paragraphs 0018-0020); and

selecting, at the preference processing subsystem independent of the user computing device, a second media content file to be distributed individually to the user computing device based on the modified preference profile (See page 2, paragraphs 0018-0021, wherein “transmit individually” deemed to be personalization of the broadcast).

Kaufman et al. discloses the claimed invention except for scans a “disk drive” of the user-computing device. Kaufman et al. does not explicitly teach scans a disk drive, however he teaches scanning a memory.

It would have been obvious to one having ordinary skill in the art at the time the invention was made to store files in a “disk drive” since it was known in the art that memory resides in a computer “hard drive”.

As to claim 54, Kaufman et al. discloses an article comprising a storage medium having stored thereon instructions that when executed by a machine result in the following:

storing a preference profile for a user of a media content file distribution source at the media content file distribution source which is independent of a user computing device, the preference profile being based on previously determined media scores for the user and media content files of the user computing device determined by a preference determination module located at the media distribution source scanning the user computing device (See page 2, paragraphs 0015-0016, also see page 1, paragraphs 0011-0012, wherein “scanning the user device” reads on “extracting files from memory”);

determining a score for a media content file, at a preference processing subsystem independent of the user computing device, distributed to the user by the media content file distribution source, wherein the score is calculated based on a comparison of a length of time in which the user allows the media content file to be played at the user computing device relative to a total length of the media content file (See figure 2, 975, Limited Device Capture, Rating, shows “Rating” reads on “score”, also see page 1, paragraphs 0009-0011);

modifying the preference profile, at the preference processing subsystem independent of the user computing device, based on the score to create a modified preference profile (See page 2, paragraphs 0018-0020); and

selecting a second media content file, at the preference processing subsystem of the user computing device, to distribute individually to the user computing device based on the modified preference profile (See page 2, paragraphs 0018-0021, wherein “transmit individually” deemed to be personalization of the broadcast).

Kaufman et al. discloses the claimed invention except for scans a “disk drive” of the user-computing device. Kaufman et al. does not explicitly teach scans a disk drive, however he teaches scanning a memory.

It would have been obvious to one having ordinary skill in the art at the time the invention was made to store files in a “disk drive” since it was known in the art that memory resides in a computer “hard drive”.

As to claims 2, 31, and 38, Kaufman et al. as modified discloses wherein the media content file is a music file (See page 2, paragraph 0021).

As to claims 3, 32, and 39, Kaufman et al. as modified discloses wherein a rate at which the processing module modifies the preference profile is configurable (See page 2, paragraphs 0018-0021).

As to claims 4, 33, and 40, Kaufman et al. as modified discloses wherein the preference detection computer system determines the length based on user's responses made with a user control point (See page 1, paragraphs 0009-0011).

As to claims 5, and 41, Kaufman et al. as modified discloses wherein the user control point is a remote control (See page 2, paragraph 0018).

As to claims 6, 34, and 41, Kaufman et al. as modified discloses wherein the second media content file is sent to the user computing device via an Internet stream (See page 2, paragraphs 0019-0020).

As to claims 7, 35, and 42, Kaufman et al. as modified discloses wherein the processing module periodically selects testing media content files to distribute to the user, wherein the testing media content files are randomly selected to test whether the user's media content file preferences have changed (See page 2, paragraphs 0021-0022, wherein "randomly" reads on "content is being modified").

As to claims 8, 36, and 43, Kaufman et al. as modified discloses wherein the processing module further modifies the preference profile based on responses of other users having similar media preferences (See page 1, paragraph 0012).

As to claim 55, Kaufman et al. as modified discloses wherein the selection of the media content file to distribute to the user is based on the initial preference file and a time of the week, such as night of the week (See page 1, paragraph 0009).

Reasons for Allowance

4. Claims 44, 46, 47, and 50 are allowed over the prior art made of record.

Response to Arguments

5. Applicant's arguments filed on May 10, 2005 have been fully considered but they are not persuasive.

In response to applicant's argument that "Kaufman et al. does not teach or suggest preference module is independent of a user computing device" is acknowledged but it is not deemed to be persuasive.

The Examiner maintains that Kaufman et al.'s preference determination module is removable/a plug-in and is therefore not part of the user's device. The statistics are being calculating apart from the actual media playing device and being forward to the broadcasting party. Nowhere in the claim, does the differentiation between hardware, software or plug-in's is mentioned.

In response to applicant's argument that "Kaufman et al. does not teach or suggest scanning the hard drive to determine the local media content files stored on the user computing device" is acknowledged but it is not deemed to be persuasive.

The Examiner maintains that Kaufman et al. client computer determines the stored local media by scanning the device on page 1, paragraphs 0011-0012. Furthermore; as explained in the office action, Kaufman et al. discloses the claimed invention except for scans a "disk drive" of the user-computing device. Kaufman et al. does not explicitly teach scans a disk drive, however he teaches scanning a memory.

It would have been obvious to one having ordinary skill in the art at the time the invention was made to store files in a "disk drive" since it was known in the art that memory resides in a computer "hard drive".

In response to applicant's argument that "Kaufman et al. does not teach or suggest wherein the processing module further selects a second media content file to transmit individually to the user computing device based on the new preference profile" is acknowledged but it is not deemed to be persuasive.

The Examiner maintains that Kaufman et al. disclosed the argued limitaion on page 2, paragraphs 0018-0021, wherein "transmit individually" deemed to be personalization of the broadcast. The Client's media player receives personalized feed as taught on pages 1-2, paragraphs 0014-0018 thereby broadly interpreting the broadcast by the Examiner to transmit individually.

In response to applicant's argument that "Kaufman et al. does not teach or suggest a second media content file for the user computing device is selected based on both the initial preference profile and the time of the year" is acknowledged but it is not deemed to be persuasive.

The Examiner maintains that Kaufman et al. discloses time of year on page 1, paragraph 0009, wherein "time of year" reads on "target broadcast time".

The Examiner refers to applicant's specification for support to this amended feature wherein the page 12, lines 17-20 specifically recites "The program 310 in this system **may also** be programmed to periodically select songs based solely upon the time of day, week, year, etc." as a part of user's profile. Therefore, by stating, "may also"; the applicant is introducing an optional feature that can either be included or not. Kaufman et al.'s preference module is programmable and capable of personalization that **may also** include basing the recommended songs on time of year.

Conclusion

6. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37

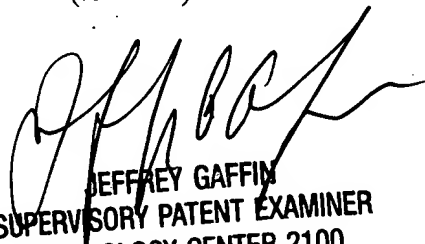
CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

7. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Neveen Abel-Jalil whose telephone number is 571-272-4074. The examiner can normally be reached on 8:30AM-5:30PM EST.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jeffrey A. Gaffin can be reached on 571-272-4146. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Neveen Abel-Jalil
August 29, 2005


JEFFREY GAFFIN
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